2016 IL App (1st) 134010-U

SIXTH DIVISION
March 11, 2016

No. 1-13-4010



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 11 CR 0655901 |
| | ) | |
| CORTEZ FOSTER, | ) | Honorable |
| | ) | Dennis J. Porter, |
| Defendant-Appellant. | ) | Judge Presiding. |

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PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Delort concurred in the judgment.

**O R D E R**

¶ 1 *Held*: We affirmed defendant's conviction of aggravated criminal sexual assault where the evidence was sufficient to prove him guilty beyond a reasonable doubt.

¶ 2 Following a bench trial, the trial court convicted defendant Cortez Foster of the aggravated criminal sexual assault and robbery of I.E. The trial court sentenced defendant to natural life in prison for the aggravated criminal sexual assault conviction and to a consecutive seven-year prison term for the robbery conviction. On appeal, defendant argues the State failed to prove him guilty of aggravated criminal sexual assault beyond a reasonable doubt. We affirm.

¶ 3 Defendant's arrest and prosecution arose out of a March 2011 incident during which I.E. was beaten, anally penetrated with wooden objects, and had his cell phone taken.

¶ 4 At the bench trial, I.E. testified he was 68 years old at the time of trial and had immigrated to the United States in 1998 from Bosnia and Herzegovina. On March 25, 2011, he went to Grant Park "probably" to listen to music. He had his cell phone with him that day. I.E. no longer had any memory of the incident and did not know how he was injured.

¶ 5 Andre Cleveland testified that, late on the evening of March 25, 2011, he turned his car from Michigan Avenue onto Balbo Drive near Grant Park and saw I.E. 20 feet from the road. I.E.'s face was swollen and bloody, and he was naked below the waist. Mr. Cleveland asked I.E. if he was "okay" and I.E. groaned in response. Mr. Cleveland called 9-1-1, and waited with I.E. until police and paramedics arrived.

¶ 6 Chicago police officer Calvin Blunt testified he was on duty on the evening of March 25, 2011, and responded to a call for assistance for a man injured in Grant Park. He saw I.E. at the scene with Mr. Cleveland. I.E.'s face and head were bloody and he was not wearing pants. When asked what had happened, I.E. was not able to respond. Officer Blunt followed a trail of blood into the park, where he found more blood and a bloody denture.

¶ 7 Anamar Hernandez, a paramedic with the Chicago fire department, was dispatched at 12:20 a.m. on March 26, 2011, to Michigan Avenue and Balbo Drive. She found I.E. standing by a railing, naked from the waist-down, bleeding from the head, nose, and face, and his eyes were closed from swelling. I.E. was not speaking, only moaning. I.E. was transported to Northwestern Memorial Hospital.

¶ 8 Detective Jeffrey Hansson was assigned to Grant Park in the early hours of March 26, 2011. At the scene, he found blood, dentures, a glove and a sock. Forensic investigator Paul Presnell testified that he was with Detective Hansson and photographed the evidence he had collected, including a gray sweater in a tree, a sock near a trail of blood, pants, and sweatpants. Investigator Presnell went to the hospital to collect I.E.'s clothing and "a plastic bucket [containing] bloody sticks."

¶ 9 Trauma surgeon Marie Crandall treated I.E. at Northwestern Memorial Hospital. I.E. had a traumatic brain injury and the bleeding on his brain was life-threatening. Traumatic brain injury can lead to "amnesia to the event." I.E. also suffered a fracture of the eye orbit, damage to the eye muscles, and a cut involving the eyelid and margin of the left eye. Three pieces of wood ranging from four centimeters to eight centimeters in length, and two centimeters in diameter were removed from I.E.'s rectum. Dr. Crandall then performed a colostomy.

¶ 10 Detective Paul Zacharias testified that on March 26, 2011, he worked with other officers to investigate I.E.'s injuries. The officers spoke to I.E.'s son who gave them I.E.'s cell phone number and described the phone as a "flip phone". After "pinging" I.E.'s cell phone, the officers proceeded to Vera Allen's apartment building and informed her that they had information someone had called her from a phone that they were trying to locate. The call was still on Ms. Allen's caller I.D. Ms. Allen said that the call came from her son Reginald. Officers then went to Reginald's apartment. When they arrived, Reginald gave the police a flip phone and they took him to the police station. There, Reginald spoke to the police. Based on this conversation, the police found defendant at Pacific Garden Mission located at 1418 South Canal Street. Defendant was taken into custody and transported to Area 3 police station.

¶ 11 Detective Zacharias, another officer and defendant had a conversation at approximately 1:05 a.m. on March 27, 2011. After advising defendant of his *Miranda* rights, the officers stated that they knew defendant had possession of a phone that was taken during the commission of a crime. Defendant initially denied knowledge of the phone. He later stated that he bought the phone before selling it to Reginald Allen. Defendant then stated that he was walking through Grant Park when he saw a phone on the ground near a Caucasian man, so he took it.

¶ 12 The next morning, Detective Zacharias spoke to defendant again. Defendant stated that he went to a secluded spot in Grant Park to urinate. There, an older Caucasian man with a foreign accent appeared and asked for a cigarette. Although defendant complied, he felt uneasy about being in an isolated spot with this man. At one point, the man grabbed his own "private parts," extended the other hand toward defendant, and made suggestive sexual statements. Defendant felt very uncomfortable and pushed the man's hand away. When the man continued to advance, defendant used two hands to push him away. The man blocked defendant's attempt to get away, so defendant punched him twice in the face and he fell to the ground. When defendant looked down, he saw a cell phone on the ground, took it, and sold it to Reginald. He denied kicking, stomping or impaling the man.

¶ 13 Detective Zacharias was present when an evidence technician collected defendant's clothes. At this point, he noticed that defendant's left pant leg was rolled up. When defendant uncuffed the pant leg, Detective Zacharias observed a large blood stain. When Detective Zacharias inquired about the stain, defendant stated that the man he punched had been bleeding from the nose.

¶ 14 Assistant State's Attorney (ASA) James Murphy testified he spoke with defendant on the evening of March 27, 2011. Defendant stated that on March 25, 2011, he was walking past Grant Park when an older Caucasian man asked him for a cigarette. After giving the man a cigarette and smoking with him, the man reached over, grabbed defendant's crotch, and made a sexual comment. When the man reached for defendant's crotch again defendant punched him hard in the face twice and the man fell to the ground. Defendant saw the man's cell phone on the ground, so he picked it up, went to Reginald's house and sold the phone. Defendant denied being gay or bisexual, and stated he did not "use a branch or a stick" on the man.

¶ 15 The next afternoon, a detective showed defendant a photograph of I.E. Defendant identified I.E. as the man with the accent whom he punched twice. ASA Murphy again asked defendant if he was gay, bisexual, or "on the down low" because Reginald said defendant would "do stuff with guys for cash." Defendant replied that Reginald liked to joke around.

¶ 16 ASA Murphy asked what defendant did to I.E. and defendant replied that he punched I.E. twice. He explained that I.E.'s blood was on his pants because it dripped from I.E.'s nose. ASA Murphy asked defendant about I.E.'s injuries, and defendant admitted he kicked I.E. because he was mad that I.E. "came on to him." Defendant wanted to humiliate I.E., so he grabbed a branch that was on the ground and "used it" on I.E. Defendant declined ASA Murphy's offer to make a written statement.

¶ 17 The parties stipulated that a DNA profile obtained from the blood found on the pants collected from defendant matched the DNA profile of I.E.

¶ 18 The trial court found defendant guilty of aggravated criminal sexual assault and robbery. The trial court sentenced defendant to natural life in prison for the aggravated criminal sexual

assault, and to a consecutive seven-year sentence for the robbery. On appeal, defendant only argues for the reversal of his aggravated criminal sexual assault conviction; he makes no argument for the reversal of his robbery conviction.

¶ 19 Defendant challenges the sufficiency of the evidence as to the aggravated criminal sexual assault conviction under section 12-14(a)(2) of the Criminal Code of 1961 (720 ILCS 5/12-14(a)(2) (West 2010) (now see 720 ILCS 5/11-1.30(a)(2)(West Supp. 2012))). Section 12-14(a)(2) provides that a person commits aggravated criminal sexual assault if he commits criminal sexual assault and during the commission of the offense he causes bodily harm to the victim. 720 ILCS 5/12-14(a)(2) (West 2010).

¶ 20 Defendant argues that the State failed to prove beyond a reasonable doubt that he "put a tree branch" in I.E.'s rectum because there were no witnesses to the offense. He further argues that his inculpatory statement that he "used" a tree branch on I.E. was vague, not memorialized, and contrary to the evidence at trial.

¶ 21 When reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. Circumstantial evidence is sufficient to sustain a conviction provided that such evidence satisfies, beyond a reasonable doubt, the elements of the crime charged. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances, however, it is sufficient if all the evidence taken together proves the defendant's guilt. *Id.* The trier of fact is not required to disregard the interferences that normally flow from the evidence or to seek out all possible

explanations consistent with a defendant's innocence and elevate them to reasonable doubt. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60.

¶ 22 A reviewing court will not retry the defendant (*People v. Lloyd*, 2013 IL 113510, ¶ 42), or substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of witnesses (*Brown*, 2013 IL 114196, ¶ 48). See also *People v. Ross*, 229 Ill. 2d 255, 272 (2008) (the trier of fact is responsible for evaluating the credibility of the witnesses, weighing witness testimony, and determining what inferences to draw from the evidence). This court reverses a defendant's conviction only where the evidence is so unreasonable, improbable or unsatisfactory that a reasonable doubt of his guilt remains. *Brown*, 2013 IL 114196, ¶ 48.

¶ 23 Viewed in the light most favorable to the State, the evidence at trial was sufficient to find defendant guilty beyond a reasonable doubt of aggravated criminal sexual assault.

¶ 24 Specifically, in his inculpatory statements, defendant admitted I.E. acted in a sexually suggestive manner toward him in a secluded area of Grant Park and, in response, defendant twice punched I.E. hard in the face, "used" a tree branch on I.E., and took I.E.'s cell phone. In addition to defendant's statements, there was strong corroborative evidence that defendant committed the offense. The medical testimony, as to I.E.'s traumatic brain injury and concomitant memory loss, fracture of the eye orbit, damage to the eye muscles, and a cut involving the eyelid and margin of the left eye was consistent with defendant's statement that he repeatedly punched I.E. hard in the face. Dr. Crandall's testimony regarding the discovery of three pieces of wood in I.E.'s rectum, ranging from four centimeters to eight centimeters in length, and two centimeters in diameter, was consistent with defendant's statement that he "used" a branch on I.E. after I.E. came on to

him. Further, DNA evidence showed that I.E.'s blood was recovered from defendant's pants. Defendant also had been in possession of I.E.'s cell phone. See *Hall*, 194 Ill. 2d at 330 (a trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances, however, it is sufficient if all the evidence taken together proves the defendant's guilt).

¶ 25 Defendant argues his inculpatory statement to ASA Murphy lacks credibility because it was not memorialized, but he cites no relevant authority for his conclusion that a statement must be memorialized in order to be believable. A point raised in a brief but not cited with relevant authority fails to satisfy the requirements of Supreme Court Rule 341(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016)), and is, therefore, forfeited. *People v. Ward*, 215 Ill. 2d 317, 332 (2005). We also cannot agree with defendant that his inculpatory statement is somehow rendered unbelievable because three pieces of wood four to eight centimeters in length were recovered from I.E.'s rectum rather than a branch. A trier of fact is not required to disregard the inferences that normally flow from the evidence or to seek out all possible explanations consistent with a defendant's innocence and elevate them to reasonable doubt. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60.

¶ 26 Any rational trier of fact could have found defendant guilty of aggravated criminal sexual assault when the evidence at trial, viewed in the light most favorable to the prosecution, established that defendant's response to I.E.'s alleged sexual advances was to punch, kick, and "use" a tree branch on I.E. and, after being taken to the hospital, I.E. was found to have suffered traumatic brain injury and extensive damage to his eye and three pieces of wood ranging from four to eight centimeters in length were recovered from I.E.'s rectum. *Brown*, 2013 IL 114196,

¶ 48. This court reverses a defendant's conviction only where the evidence is so unreasonable or unsatisfactory that a reasonable doubt of his guilt remains (*id.*); this is not one of those cases. Therefore, we affirm defendant's conviction for aggravated criminal sexual assault.

¶ 27 As defendant has failed to challenge the robbery conviction on appeal, we affirm that conviction as well.

¶ 28 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.